



Rule 229.176

**Certification of
Food Managers**

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Texas Administrative Code

TITLE 25: HEALTH SERVICES
PART I: DEPARTMENT OF STATE HEALTH
SERVICES
CHAPTER 229: FOOD AND DRUG
SUBCHAPTER K: TEXAS FOOD ESTABLISHMENTS

RULE §229.176 Certification of Food Managers

(a) Purpose. This section is intended to provide the framework of certification programs for food managers in accordance with Texas Health and Safety Code (HSC), Chapter 438, Subchapter G. Certification of Food Managers supports demonstration of food safety knowledge, thereby reducing the risk of foodborne illness outbreaks caused by improper food preparation and handling techniques.

(b) Definitions. The following words and terms when used in this section shall have the following meanings unless the context clearly indicates otherwise.

(1) ANSI-CFP Program Accreditation--The American National Standard Institute (ANSI) and the Conference for Food Protection (CFP) accredits programs as outlined in the CFP: Standards for Accreditation of Food Protection Manager Certification Programs.

(2) Certificate--The documentation issued by the department or an organization that administers a department approved examination verifying that an individual has complied with the requirements of this section.

(3) Certification--The process whereby a certificate is issued.

(4) Certified food manager--A person who has demonstrated that he/she has the knowledge, skills and abilities required to protect the public from foodborne illness by means of successfully completing a food safety examination as described in this section.

(5) Certified food manager examination--A department approved examination for food manager certification.

(6) Department--Department of State Health Services.

(7) Examination administrator--An individual or individuals who are designated in writing to the department, by the licensee, who is responsible for administering food manager certification examinations.

(8) Examination site--The physical location at which the department approved examination is administered.

(9) Food--A raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

(10) Food establishment--

(A) Food establishment means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption:

(i) such as a restaurant; retail food store; satellite or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; vending location; conveyance used to transport people; institution; or food bank; and

(ii) that relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(B) Food establishment includes:

(i) an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; and

(ii) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.

(C) Food establishment does not include:

(i) an establishment that offers only prepackaged foods that are not potentially hazardous;

(ii) a produce stand that only offers whole, uncut fresh fruits and vegetables;

(iii) a food processing plant;

(iv) a kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by law;

(v) an area where food that is prepared as specified in clause (iv) of this subparagraph is sold or offered for human consumption;

(vi) a Bed and Breakfast Limited facility as defined in these rules; or

(vii) a private home that receives catered or home-delivered food.

(11) Law--Applicable local, state and federal statutes, regulations and ordinances.

(12) Licensee--The individual, corporation, or company that is licensed by the department to administer a department approved examination for food manager certification and complies with the examination site requirements.

(13) Nonprofit organization--A civic or fraternal organization, charity, lodge, association, proprietorship or corporation possessing a 501(C) exemption under the Internal Revenue Code; or religious organizations meeting the definition of "church" under the Internal Revenue Code, §170(b)(1)(A)(I).

(14) Person--An association, corporation, partnership, individual or other legal entity, government or governmental subdivision or agency.

(15) Personal validation question--A question designed to establish the identity of the candidate taking a certified food manager examination by requiring an answer related to the candidate's personal information such as a driver's license number, address, date of birth, or other similar information that is unique to the candidate.

(16) Proctor--The examination administrator or a person who is designated to assist the examination administrator.

(17) Psychometric--Scientific measurement or quantification of human qualities, traits or behaviors.

(18) Reciprocity--Acceptance by state and local regulatory authorities of a department approved food manager certificate.

(19) Regulatory authority--The local, state, or federal enforcement body or authorized representative having jurisdiction over the food establishment.

(20) Secure--Access limited to the licensee or examination administrator.

(21) Traceable means--A method of mailing documents that can be tracked in the event of loss or delay.

(c) Certified food manager.

(1) Certified food manager responsibilities. Responsibilities of a certified food manager include:

(A) identifying hazards in the day-to-day operation of a food establishment that provides food for human consumption;

(B) developing or implementing specific policies, procedures or standards aimed at preventing foodborne illness;

(C) coordinating training, supervising or directing food preparation activities and taking corrective action as needed to protect the health of the consumer;

(D) training the food establishment employees on the principles of food safety; and

(E) conducting in-house self-inspection of daily operations on a periodic basis to ensure that policies and procedures concerning food safety are being followed.

(2) Certification by a food safety examination. To be certified, a food manager must pass a department approved examination or a national examination recognized by the ANSI-CFP Program Accreditation.

(3) Certificate reciprocity. A certificate issued to an individual who successfully completes a department approved examination shall be accepted as meeting the training and examination requirements under HSC, §438.046(b).

(4) Certificate availability. The original food manager certificate shall be conspicuously posted at each food establishment.

(d) Licensing of certified food manager licensee. The department shall issue a license to certified food manager licensees meeting the requirements of this subsection. A license issued under these rules shall expire two years from the date of issuance. A license is not transferable on change of ownership, name, or change of site location.

(1) Application. Persons wishing to apply for a certified food manager license shall submit a completed application to the department.

(2) Certified food manager licensee fee. The completed license application shall include the appropriate non-refundable fee as specified in subsection (o)(1) of this section.

(3) Examination security agreement. The licensee shall submit a signed security agreement for each examination administrator using a department examination.

(4) Certification examination. Department approved examination(s) utilized by the certified food manager licensee shall be designated on the application.

(5) Number of examination sites utilized. The license application shall indicate the number of examination sites to be utilized under the certified food manager license.

(e) Responsibilities of licensee.

(1) Compliance with food manager laws and rules. The licensee is responsible for compliance with applicable food manager laws and rules.

(2) Payment of fees. All fees shall be non-refundable and paid as specified in subsection (o) of this section.

(3) Change of the examination administrator. The licensee shall submit a signed security agreement by a new examination administrator prior to administering the department examination. New examination administrators must receive instruction on administrative responsibilities for examination security and processing, based on the most current department guidelines.

(4) Submission of answer sheets. The licensee shall ensure that the answer sheets used for computerized grading shall be submitted to the department by traceable means. The completed answer sheets must be received by the department within seven working days of the examination date.

(f) Responsibilities of department examination administrators.

(1) Compliance with food manager laws and rules. The examination administrator is responsible for compliance with the food manager laws and rules applicable to examination administration.

(2) Examination security agreement. An examination administrator must complete, sign and date a security agreement and submit it to the department through the certified food manager licensee. The department may not issue examinations to examination administrators who do not have a signed security agreement on file with the department.

(3) Examination security. The examination administrator shall provide examination security at the examination site. All security measures specified in this section shall be met and maintained at all times during examination storage, administration and issuance.

(4) Submission of examination booklets and answer sheets. The examination administrator shall submit the examination booklets and answer sheets used for computerized grading via traceable means along with department forms as required.

The examination booklets, completed answer sheets and required forms must be received by the department within seven working days of the examination date.

(5) Examination results. Candidates shall be informed of the process for receiving their certificate upon passing the examination. Candidates shall be informed of the reexamination process, in the event of examination failure.

(6) Replacement process for candidate certificate. Candidates shall be informed of the process for replacing lost or damaged certificates.

(g) Responsibilities for Internet examination providers.

(1) Compliance with food manager laws and rules. Internet examination providers are responsible for compliance with food manager laws and rules applicable to examination administration.

(2) Examination Security Agreement. Internet examination providers must submit the department security agreement signed by the certified food manager licensee.

(3) Examination Security. Candidates taking Internet examinations shall be advised on the application that outside training materials or assistance shall not be used during administration of the examination and that appropriate measures must be taken to assure that the examination is not compromised.

(h) Certified food manager certificates.

(1) General certificate issuance. Certificates shall be issued by the department or the organization that administers a department approved examination. Certificates issued after successful passage of a department approved examination shall be deemed to meet the requirements for food manager certification.

(2) Department certificate issuance. Certified food manager certificates for candidates who pass the department's examination will be mailed directly to the candidate.

(3) Certificate period. A certified food manager certificate issued by the department shall be valid for five years from the date of passing the examination. All certificates issued prior to the effective date of these rules will expire on the expiration date as stated on the certificate.

(4) Two-year renewal certificate. Food manager certificates issued by the department from May 6, 2004 to April 24, 2008, must be renewed every two years and may be renewed two times.

(5) Recertification. Candidates may become recertified by passing a department approved examination.

(6) Department certificate replacement. An individual requesting a certified food manager certificate replacement must submit a completed written application to the department with the appropriate non-refundable fee. Replacement certificates will bear the same expiration date as the original certificate.

(i) Department examination criteria. The department examination shall meet accepted psychometric standards for reliability, validity and passing score. The department examination shall consist of 75 statistically valid questions to be administered at one time following any voluntary training which may precede the examination.

(j) National examination criteria. National food manager examinations recognized by the ANSI-CFP Program Accreditation shall be considered department approved examinations.

(k) Internet examination criteria. Documentation that Internet examination questions meet accepted psychometric standards for reliability, validity, and passing score shall be submitted to the department. Each candidate shall receive a unique form of the examination with regard to question sequence. Internet examinations shall consist of 75 statistically valid questions that are administered at one time following any voluntary training that may precede the examination.

(l) Site requirements for administration of the department examination and national examinations. Examination sites utilizing the department examination or a national examination must comply with all legal requirements for safety, health, and accessibility for all qualified candidates. Accommodations, lighting, space, comfort, and workspace for taking the examination must allow all candidates to perform at their highest level of competency. Requirements at each site include but are not limited to:

(1) accessibility in accordance with the requirements of the Americans with Disabilities Act must be available for all qualified examinees;

(2) sufficient spacing between each examinee in the area where the actual examination is conducted, or other appropriate and effective methods, to preclude any examinee from viewing other candidates' examinations;

(3) acoustics that allow each examinee to hear instructions clearly, using an electronic audio system if necessary;

(4) adequate lighting at each examinee's workspace for reading fine print;
and

(5) appropriate ventilation and temperature for the health and comfort of examinees.

(m) Department examination administration. Examination administrators shall implement and maintain the following examination administration procedures for a program utilizing the department examination:

(1) Security procedures shall be in place, which protect the examination from compromise at all times. The examinations shall be stored and administered under secure conditions and shall be inventoried prior to and immediately following each administration of an examination. The examination may not be duplicated. Candidates shall have access to the examination only during examination administration;

(2) There shall be one proctor for every 35 candidates taking the examination. Proctors shall, by picture identification, confirm the accurate identity of each candidate. The examination administrator shall train and supervise the activities of any proctor(s);

(3) A candidate who speaks English as a second language may use a translation dictionary to translate English into their native language;

(4) An employee or a non-biased volunteer translator may be used as a translator of languages other than English to administer the examination orally. Translators shall be pre-approved by the examination administrator, and shall not compromise the integrity of the examination nor the examination results of the candidate;

(5) Each candidate's examination results and personal information shall be held confidential. Such information may be made available only to the examinee and to persons designated in writing by the examinee in a dated document containing the examinee's original signature. The signed document must specify the name(s) of specific individuals the information may be released to and the exact information which may be provided. The department shall only release information in writing and only to appropriately designated and identified person(s);

(6) All completed answer sheets for the department examinations shall:

(A) be submitted by traceable means, and received by the department within seven working days of the examination date for grading and processing;

(B) be submitted in a condition acceptable for immediate scanning. Forms requiring extensive correction shall be returned to the examination administrator ungraded; and

(7) Only the department shall grade the department examination.

(n) Internet examination administration.

(1) Registration requirements for Internet examinations. The licensee shall register the candidates and require the candidates to:

- (A) verify their identity;
- (B) provide responses to ten personal validation questions; and
- (C) maintain examination security.

(2) Licensee examination disclosure information. The licensee shall inform the candidate that:

- (A) reference materials shall not be used during the examination;
- (B) the candidate shall not receive assistance from anyone during the examination; and
- (C) examination questions may not be replicated in any fashion.

(3) Personal validation questions. The licensee shall verify a candidate's identity throughout the examination. The personal validation process must include the following elements:

- (A) a minimum of five personal validation questions selected from the ten questions provided during registration shall be incorporated at various times during the examination;
- (B) the personal validation questions must be randomly generated with respect to time and order;
- (C) the same personal validation questions shall not be asked more than once during the same examination; and
- (D) the examination session shall cease and the candidate shall be automatically exited from the examination if a candidate answers a personal validation question incorrectly.

(4) System support. The licensee of an approved Internet examination must include the following system capabilities and security measures:

- (A) capability to browse or review previously completed examination questions;

(B) capability to navigate logically and systematically through the examination;

(C) technical support personnel for Internet examination issues;

(D) security of personal candidate information in transit and at rest;

(E) a back-up and disaster recovery system capability; and

(F) assurance that examination data is maintained in a secure and safe environment and readily available to the department.

(5) Reporting requirements for non-proctored Internet examination administrators. Internet examination administrators who administer examinations in non-proctored locations shall submit a semi-annual report to enable the department to evaluate examination security and system performance. The report shall include:

(A) statistical data to enable measurement of central tendency, ranges of examination scores, standard deviation, standard error of measurement, and examination cut score;

(B) the number of personal validation questions used; and

(C) the number of examinations discontinued due to incorrect responses to personal validation questions.

(6) Time allotment for non-proctored Internet examination providers. Time allotted for administration of non-proctored examinations shall not exceed 90 minutes.

(o) Required fees. All fees are payable to the Department of State Health Services and are non-refundable. Fees must be submitted with the appropriate form that relates to the fee category. A current license shall only be issued when all past due fees and late fees are paid for all years of operation in Texas. Fees shall be:

(1) Certified food manager licensee fee. Certified food manager licensee fees shall be valid for a two-year period and shall be based on the number of sites at which the certified food manager licensee administers the examinations based on the following scale:

(A) one site:

(i) the two-year license fee for initial, renewal, or change of ownership shall be \$400; and

(ii) a license fee for a program amendment during the current licensure period shall be \$200;

(B) two to ten sites:

(i) the two-year license fee for initial, renewal, or change of ownership shall be \$1,000; and

(ii) a license fee for a program amendment during the current licensure period shall be \$500;

(C) over ten sites:

(i) the two-year license fee for initial, renewal, or change of ownership shall be \$2,000; and

(ii) a license fee for a program amendment during the current licensure period shall be \$1,000.

(2) Examination packet fee. The fee for a department examination packet shall be \$25 and shall include a manager's certificate valid for five years if the candidate passes the examination. If the candidate fails the department examination, another candidate fee must be submitted to retake the examination.

(3) Two-year renewal certificate fee. The fee for a two-year renewal certificate shall be \$10.

(4) Replacement certificate fee. A replacement certificate fee for the department examination shall be \$15.

(5) Late fee. A certified food manager licensee submitting a completed renewal application to the department after the expiration date shall pay an additional \$100 as a late fee.

(6) Texas Online Authority fee. For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

(p) Department examination related to late fees. Department examinations will not be provided to any licensee that is over 30 days delinquent in renewing a license.

(q) Certified food manager licensee registry. The department shall maintain a registry of all licensed certified food manager licensees. The registry shall be made available on the department website.

(r) Department audits. Audits of certified food manager licensees shall be conducted to assess compliance with these rules. Audits may be based on analysis of data compiled by the department. Licensees shall allow personnel authorized by the department access for the purposes of an audit.

(s) Denial, suspension and revocation of certified food manager license. A certified food manager license may be denied, suspended or revoked for the following reasons:

(1) a licensee, examination administrator, or proctor breaches the security agreement;

(2) a licensee is delinquent in payment of fees as described in this section;
or

(3) violation of the provisions of this section.

(t) Denial, suspension and revocation procedures. Denial, suspension and revocation procedures under this section shall be conducted in accordance with the Administrative Procedure Act, Government Code, Chapter 2001.

(u) Suspension of License Relating to Child Support and Child Custody.

(1) On receipt of a final court order or attorney general's order suspending a license due to failure to pay child support or for failure to comply with the terms of a court order providing for the possession of or access to a child, the department shall immediately determine if a license has been issued to the obligator named and:

(A) record the suspension of the license in the department's records;

(B) report the suspension as appropriate; and

(C) demand surrender of the suspended license.

(2) The department shall implement the terms of a final court or attorney general's order suspending a license without additional review or hearing. The board will provide notice as appropriate to the licensee or to others concerned with the license.

(3) The department may not modify, remand, reverse, vacate, or stay a court or attorney general's order suspending a license issued under the Family Code, Chapter 232, and may not review, vacate, or reconsider the terms of an order.

(4) A licensee who is the subject of a final court or attorney general's order suspending his or her license is not entitled to a refund for any fee paid to the department.

(5) If a suspension overlaps a license renewal period, an individual with a license suspended under this section shall comply with the normal renewal procedures in the Act and this chapter; however, the license will not be renewed until subsections (g) and (h) of this section are met.

Source Note: The provisions of this §229.176 adopted to be effective July 7, 2002, 27 TexReg 5783; amended to be effective May 6, 2004, 29 TexReg 4175; amended to be effective April 24, 2008, 33 TexReg 3278



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